

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, : Case No: 1:22-cv-5944
: *Plaintiff,* :
: v. :
ESTER BERKO, a.k.a. ESTHER BERKO, :
: *Defendant.* :

COMPLAINT

The plaintiff United States of America, pursuant to 31 U.S.C. § 3711(g)(4)(C), with the authorization of a delegate of the Secretary of the Treasury and at the direction of a delegate of the Attorney General, brings this action to obtain a money judgment against defendant Ester Berko, also known as Esther Berko, for civil penalty assessments made against her for her non-willful failure to timely report her interests in foreign financial accounts for the years 2008, 2009, 2010, 2011, and 2012. The United States complains and alleges that:

Jurisdiction and Parties

1. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1345, and 1335(a).
2. The defendant Ester Berko, also known as Esther Berko, resides in Queens County, New York, within the jurisdiction of this Court.

Foreign Financial Account Reporting Requirements

3. Individuals who are citizens and residents of the United States must disclose, on an annual basis, any foreign financial accounts with aggregate balances exceeding \$10,000 in

which they have any interest or over which they have signature authority. 31 U.S.C. § 5314; 31 C.F.R. § 1010.350(a).

4. To fulfill this reporting requirement, a person must file a specified form, commonly known as an “FBAR,” with the Department of the Treasury. For all years that are at issue in this case, that form was Form TD F 90-22.1, *Report of Foreign Bank and Financial Amounts*, and the FBAR was due no later than June 30 of the following year. 31 C.F.R. § 1010.306(c).

5. Non-willful violations of a U.S. person’s failure to report the existence of a foreign financial account are subject to civil penalties of up to \$10,000 for each violation. 31 U.S.C. § 5321(a)(5)(B)(i).

Ms. Berko’s Interests in Foreign Financial Accounts

6. Ms. Berko was born in 1953 in Munich, Germany. She has resided in the United States since approximately 1977 and is a U.S. citizen.

7. In 2007, Ms. Berko’s mother passed away, and Ms. Berko inherited interests in foreign financial accounts maintained by Bank Leumi (Switzerland), with an account number ending in x6101; Stadtsparkasse München (Germany), with account numbers ending in x1055 and x0830; and UBS AG (Switzerland), with an account number ending in x9585.

8. In 2010, Ms. Berko opened three additional accounts with Bank Leumi (Israel), including one with an account number ending in x6793.

Claim to Reduce to Judgment Penalties Assessed Under 31 U.S.C. § 5321

9. The United States repeats the allegations contained in paragraphs 1 through 8 as if fully set forth herein.

10. During each of the 2008, 2009, 2010, 2011, and 2012 years, Ms. Berko maintained interests in or had signatory authority over foreign financial accounts with high balances exceeding \$10,000 at one or more of Bank Leumi (Switzerland), Bank Leumi (Israel), Stadtsparkasse München (Germany), and UBS AG (Switzerland). She was therefore required to file FBARs reporting all such interests by June 30 of the following calendar year.

11. Ms. Berko failed to timely file FBARs for each of the 2008, 2009, 2010, 2011, and 2012 years.

12. On May 11, 2020, Ms. Berko signed IRS Form 13449, *Agreement to Assessment and Collection of Penalties Under 31 USC 5321(a)(5) and 5321(a)(6)*, in which she consented to assessment of the following penalties for her non-willful failure to file FBARs as required:

Year	Account	Amount of Penalty
2008	Bank Leumi (Switzerland), x6101	\$5,000
2008	UBS AG (Switzerland), x9585	\$5,000
2009	Bank Leumi (Switzerland), x6101	\$5,000
2009	UBS AG (Switzerland), x9585	\$5,000
2010	Bank Leumi (Switzerland), x6101	\$3,333.33
2010	UBS AG (Switzerland), x9585	\$3,333.33
2010	Bank Leumi (Israel), x6793	\$3,333.34
2011	Bank Leumi (Switzerland), x6101	\$2,000
2011	UBS AG (Switzerland), x9585	\$2,000
2011	Bank Leumi (Israel), x6793	\$2,000
2011	Stadtsparkasse München (Germany), x1055	\$2,000

2011	Stadtsparkasse München (Germany), x0830	\$2,000
2012	UBS AG (Switzerland), x9585	\$2,500
2012	Stadtsparkasse München (Germany), x1055	\$2,500
2012	Stadtsparkasse München (Germany), x0830	\$2,500
2012	Bank Leumi (Israel), x6793	\$2,500
TOTAL		\$50,000

13. On October 6, 2020, a delegate of the Secretary of the Treasury assessed non-willful FBAR penalties against Ms. Berko for the same years, for the same accounts, and in the same amounts as Ms. Berko had agreed to in her Form 13449 signed May 11, 2020, and as are described in paragraph 12.

14. In addition to the principal amount of the FBAR penalty assessments, Ms. Berko is liable for late-payment penalties pursuant to 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 5.5(a), and interest accruing pursuant to law.

15. As of September 20, 2022, the total outstanding balance with accruals, consisting of the FBAR penalties, penalties for late payment under 31 U.S.C. § 3717(e)(2), and interest, was \$57,802.74.

16. The assessments of the FBAR penalties described in paragraphs 12 and 13 were timely under the applicable six-year statute of limitations, 31 U.S.C. § 5321(b)(1), because Ms. Berko agreed to extend the statute of limitations as follows:

- a) On May 26, 2016, Ms. Berko agreed to extend limitations for the 2008 through 2012 years through December 31, 2017;

- b) On April 21, 2017, Ms. Berko agreed to extend limitations for the 2008 through 2011 years through December 31, 2018;
- c) On July 26, 2018, Ms. Berko agreed to extend limitations for the 2008 through 2012 years through December 31, 2019; and
- d) On May 12, 2019, Ms. Berko agreed to extend limitations for the 2008 through 2012 years through December 31, 2020.

WHEREFORE, the plaintiff United States of America requests the following relief:

- A. Judgment in favor of the plaintiff United States of America and against the defendant Ester Berko, also known as Esther Berko, in the amount of \$57,802.74, plus statutory additions and interest accruing from and after September 20, 2022; and,
- B. Any other and further relief as the Court determines is just and proper.

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